

FILED

APR 01 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARMANDO GONZALEZ,
Petitioner,

vs.

TIM VIRGA, Warden,
Respondent.

No. C 10-4236 JW (PR)

ORDER OF DISMISSAL; NEW
ACTION FILED IN ERROR;
INSTRUCTIONS TO THE CLERK

(Doc. ## 2 & 4)

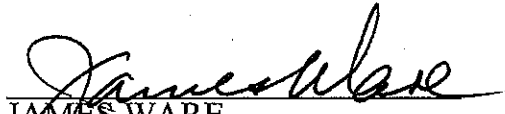
On September 20, 2010, petitioner, a state prisoner incarcerated at New Folsom State Prison in Represa, California, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a criminal judgment from Santa Clara County superior court, which the Court filed as a new action. But rather than be filed as a new action, the petition should have been filed in Gonzalez v. Walker, No. C-08-2389-VRW (N.D. Cal. filed May 6, 2008). That action was closed administratively when the Court granted petitioner's simultaneously-filed motion to stay the proceedings to allow him to exhaust state court remedies. Id., Doc. #2.

Good cause appearing, the instant action is DISMISSED as filed in error. The clerk is directed to reopen the action in Gonzalez v. Walker, No. C-08-2389-VRW and to file the instant petition under that case number. Once that matter is

1 reopened, an initial order will issue. The clerk is further directed to terminate any
2 pending motions as moot and close the file.
3
4

5 IT IS SO ORDERED.

6
7 DATED: March 29, 2011


JAMES WARE
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ARMANDO R GONZALEZ,
Plaintiff,

Case Number: CV10-04236 JW

CERTIFICATE OF SERVICE

v.

VERGA et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Armando Ruben Gonzalez V-74787
C.S.P. SAC
P.O. Box 290066
Represa, CA 95671-0066

Dated: April 1, 2011

Richard W. Wicking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk